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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,443	07/30/2003	Jerry E. Bandstra	2-5169-049	9315

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STURM & FIX LLP
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DES MOINES, IA 50309-4076

EXAMINER

KOVACS, ARPAD F

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,443

Applicant(s)

BANDSTRA ET AL.

Examiner

Árpád Fábián Kovács

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-17 is/are allowed.
- 6) ☒ Claim(s) 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 22-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Grahl et al (6601375).

Prior art discloses:

In re cl. 23:

A pickup header having teeth (26), the header is wider than a processing width (see fig 2);

left & right side pair of augers (42a & b) not extending across a full width of the pickup header (see fig 2);

an auger pair drive system for driving the augers in the same direction (fig 8).

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3. Claims 22-23 are rejected under 35 U.S.C. 102(e) as being anticipated by McClure et al (US20040011016A1).

McClure discloses:

In re cl. 23:

A pickup header having teeth (5), the header is wider than a processing width (see fig 1; ¶ 11, ln 6-7);

left & right side pair of augers (ref 7 on both sides, only one side is shown in detail) not extending across a full width of the pickup header (see fig 2);

an auger pair drive system for driving the augers in the same direction (both augers, ref 7, one side is shown in detail, rotate in the same direction to).

As applied to claim(s) 22, in view of the structure disclosed/taught by McClure, the method of operating/using the device is inherent since it is the normal and logical manner in which the device is used.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClure et al (US20040011016A1).

McClure discloses the claimed invention except for duplicating the right or left augers as claimed in cl. 18.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have at least 2 augers on top of each other, since it has been held that mere duplication of the essential parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

As applied to claim(s) 20-21, in view of the structure disclosed/taught by McClure, the method of operating/using the device would have been obvious since it is the normal and logical manner in which the device is used.

Response to Arguments

6. Applicant's arguments with respect to claims 1-21, new claims 22-23 have been considered but are moot in view of the new ground(s) of rejection.

In re cl. 18:

McClure does not show/disclose the 2nd side, because the prior art focuses on one side of the pickup header detailing the improvement of the auger arrangement/feature, therefore, the second side inherent to have the same elements as the first side.

In re new claims 22-23:

Rejection above details this broadened claimed aspect of the invention.

Allowable Subject Matter

7. Claims 1-17 allowed.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 703-308-5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábián Kovács
Primary Examiner
Art Unit 3671

ÁFK